FILED
DEC 23 1957

No. 381 ; *To be argued by*
WILLIAM MERRITT

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

against

STANLEY S. HECHT,
Defendant-Appellant.

BRIEF AND APPENDIX FOR DEFENDANT-APPELLANT

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SUPREME COURT U.S.
FILED
SEP 1957

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United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STANLEY S. HECHT,

Defendant-Appellant.

APPELLANT'S BRIEF

Statement

This is an appeal from a final judgment finding the defendant guilty of a criminal contempt of court, and the order of commitment entered thereon (3a), after a trial without a jury before Hon. Edmund L. Palmieri, *D. J.*, on June 4, 1957, pursuant to the provisions of Rule 42(b) of the Federal Rules of Criminal Procedure. The defendant was sentenced to serve a jail term of ninety days, with leave to purge himself of said contempt at any time.

On June 5, 1957 the defendant sought to purge himself of the finding of contempt and after a hearing, the Court adhered to its original decision.

The defendant filed a notice of appeal to the United States Court of Appeals for the Second Circuit and bail in the sum of Five Thousand ($5,000) Dollars was set pending that appeal.

Questions Presented

1. Did the government sustain the burden of proving the defendant guilty of a criminal contempt of court beyond a reasonable doubt?

2. Did the trial court err in finding that the defendant had failed to purge himself of the alleged contempt?

Argument

The government was investigating certain transactions between World Over Trade Export Corporation and merchants in the United States, through whom merchandise had been purchased for shipment to Cambodia and Vietnam, under the International Cooperation Administration program (6a, 12a, 13a). The defendant as President of World Over Trade Export Corporation, was served with a subpoena duces tecum on March 27, 1957. Said subpoena required that the defendant produce all the books and records of said corporation, including correspondence, quotations, invoices, freight bills, export and import licenses, bills of lading or receipts, bank statements, checks, letters of credit, corporate tax returns for 1956 and all other data relating to the operation of said corporation for the calendar years 1956 and 1957 (6a).

Pursuant to said subpoena the defendant appeared at the office of the United States Attorney and in view of the huge volume of files involved, it was agreed that an agent of the Federal Bureau of Investigation would go to the office of the corporation and examine the files and records of the corporation with full leave and authority to go through the records as the agent saw fit (17a). In accordance with said agreement, Agent Mulroy, of the Federal Bureau of Investigation, appeared at the office of the corporation on April 1, 1957 (12a), and spent three days

looking through the office, file cabinets and desk drawers with the assistance of the defendant. Some cancelled checks, invoices and purchase orders could not be found that dealt with the transactions under investigation (15a-16a). At the conclusion of this three day examination, Agent Mulroy, with the consent of the defendant, removed to the offices of the United States Attorney, approximately seven hundred (700) documents, in connection with the investigation (17a).

Thereafter, on May 15, 1957, the defendant appeared before the Grand Jury. After refusing to answer certain questions concerning the books and records of the corporation, defendant was directed by the Court to answer questions of a general nature relating to the books and records of the corporation, and to produce the records which Agent Mulroy could not locate (7a). The defendant again appeared before the Grand Jury on May 17, 1957 and after refusing to answer certain questions he was given the same directions by the Court as on the prior occasion. Defendant re-appeared before the Grand Jury on May 28, 1957 and on that occasion he did answer questions of a general nature relating to the books and records of the corporation and the general manner in which they were kept (8a), but defendant could not find and produce the missing records.

On June 3, 1957, the defendant was brought before the Court by the United States Attorney to stand trial for criminal contempt of the Court, for failure to produce the missing records. The defendant waived the notice required by Rule 42 of the Federal Rules of Criminal Procedure and trial was set for June 4, 1957 (5a).

In an attempt to establish that the missing records were in existence on March 27, 1957, the day when the subpoena duces tecum was served (6a) the government produced as a witness, Sigmund Cohen, a former employee of the cor-

poration. Cohen testified that he had worked for the corporation from March, 1956 to February, 1957 (8a). The last time Cohen had occasion to see or look at any of the documents in question was in July, 1956, eight months before he left defendant's employ and nine months prior to the service of the subpoena duces tecum (11a).

In an attempt to prove motive and willfulness on the part of the defendant to conceal the missing records, the government tried to prove through Cohen that inferior grades of merchandise were purchased for the Vietnam and Cambodia transactions (9a). However, Cohen testified that orders for tires called for reconditioned tires and not new tires; and that to his knowledge all shipments had been completed except one (10a), and that he did not know whether the defendant had completed shipment of the textiles involved in the investigation (11a). He further stated that from the samples of textiles received from the customers and given to him by the defendant, he could not tell whether these samples called for first, second, third or fourth quality textiles, but that he had purchased second quality textiles for shipment to Vietnam and Cambodia (11a-12a). He further testified that the purchase orders he prepared were prepared in triplicate, one of which was kept for the corporation files, and two were sent to the suppliers. The suppliers returned one copy with an acceptance of the order thereon (8a). Cohen also testified that the bookkeeping of the corporation was done by accountants who came in every four or five weeks, but he did not know who prepared the papers for the accountants (10a).

Agent Mulroy testified and stated that he had found correspondence, bills of lading, copies of invoices, packing lists, correspondence with banks as to letters of credit, and books of account showing the purchase of materials to be sent to Vietnam and Cambodia. The files seemed to be complete, although there were some letters that would ap-

pear to be missing (13a-14a). Although Agent Mulroy could not find certain cancelled checks and purchase orders for the Vietnam and Cambodia transactions, he did find recorded in the books of account of the corporation, records of and the numbers of the missing checks and the names of the merchants who filled the purchase orders of the corporation (15a, 18a). However, after seeing that the names of the merchants were in the corporate records, Agent Mulroy did not ask the defendant for the addresses or for any further information concerning these merchants (18a). The defendant assisted Agent Mulroy but they were unable to find the missing papers, and the defendant was at a loss to explain their disappearance and pointed out that in some instances a charwoman may have thrown them out (16a).

Agent Mulroy stated that although he had spent three days in the offices of the corporation he did not know whether copies of purchase orders were generally kept in the files of the corporation since he had confined his investigations solely to the records and files dealing with the Vietnam and Cambodia transactions (13a).

On this testimony the government rested its case, at which point the defendant also rested. The Court determined that a *prima facie* case had been made out (18a) and adjudged the defendant to be guilty of contempt, and sentenced the defendant to serve a term of three months in jail with the right to purge himself of said contempt, at any time (22a).

In an effort to purge himself of the finding of contempt the defendant appeared before the Court on June 5, 1957, and testified under oath that during the year prior to the service of the subpoena duces tecum he had employed approximately six different accountants (23a) and that in December or January he and the witness Cohen had looked for some of the records in question but could not find them (24a). On several occasions some papers had been thrown out by the cleaning woman, of which defendant had complained to the building superintendent (24a).

Defendant further testified that he had never personally destroyed any of the documents in question and that he did not have any of them in his possession or control (24a-25a). The last time defendant saw the documents in question was in December or January, when he was asked for them by his accountant in order to have proper entries recorded in the books of the corporation (24a). He further testified that in addition to the missing documents in question, many others were missing (25a-26a).

At the conclusion of the defendant's testimony and without testimony to contradict the defendant, the Court adhered to its original decision although it had some apparent doubt in its mind (26a).

POINT 1

The government failed to prove the defendant guilty of a criminal contempt of court beyond a reasonable doubt.

In a prosecution for a criminal contempt of court, the burden is upon the prosecution to establish beyond a reasonable doubt, the guilt of the accused. The burden is not upon the contemnor to exonerate himself (*Western Fruit Growers, Inc.* v. *Gotfried*, 136 F. (2d) 98; *Russell* v. *United States*, 86 F. (2d) 389; *United States ex rel. Porter* v. *Krogg Grocery and Baking Co.*, 163 F. (2d) 168; *Blip* v. *United States*, 68 F. (2d) 484).

The courts have stated that every element of the offense of criminal contempt, including criminal intent, must be proved by sufficient evidence beyond a reasonable doubt, otherwise the defendant is entitled to an acquittal (*United States* v. *Jose*, 63 F. 951; *United States* v. *Unicis Lens Co.*, 88 F. Supp. 809; *United States* v. *Dackis*, 36 F. (2d) 601; *United States* v. *P. & W. Contracting Co.*, 52 F. Supp. 792).

As the Court stated in *United States v. Univis Lens Co., supra*, at page 816:

> "* * * In the matter of intent that too is an essential element of a criminal contempt and must be established beyond a reasonable doubt, United States v. Kroger Grocery & Baking Co., 7 Cir. 163 F. 2d 168; * * *."

The defendant in a criminal contempt proceeding can legally be jailed for failure to produce requested books only when they are fairly shown to be presently within the defendant's power and control. However, merely showing that the books and records once existed, does not in and of itself prove their present existence.

This Court, in the case of *United States v. Patterson*, 219 F. (2d) 659, 661, stated:

> "As the Supreme Court said in Maggio v. Zeitz, 333 U. S. 56, 65, 68 S. Ct. 401, 406, 92 L. Ed. 476: 'Language can, of course, be gleaned from judicial pronouncements and texts that conditions once existing may be presumed to continue until they are shown to have changed. But such generalizations, useful enough, perhaps, in solving some problem of a particular case, are not rules of law to be applied to all cases, with or without reason. Under some circumstances it may be permissible, in resolving the unknown from the known, to reach the conclusion of present control from proof of previous possession. Such a process, sometimes characterized as a "presumption of fact", is, however, nothing more than a process of reasoning from one fact to another, an argument which infers a fact otherwise doubtful from a fact which is proved.' The presumption is thus no more than a common-sense inference, as strong or as weak as the nature of the surrounding circumstances permits. Brune v. Fraidin, 4 Cir. 149 F. 2d 325; * * *."

In the instant case the government has fallen far short of the necessary quantum of proof necessary to convict the defendant of a criminal contempt of court. In

this investigation, the government sought information in connection with several transactions of the corporation that involved the International Cooperation Administration. Some records of the corporation, principally purchase orders, invoices and cancelled checks could not be found by the agent of the Federal Bureau of Investigation of the defendant, although approximately seven hundred (700) other documents in connection with these transactions were turned over to the government in response to the subpoena duces tecum (17a).

Despite the absence of the records in question, the records and books of account of the corporation, turned over to the government, did have recorded in them the check numbers of the missing checks with the names of the merchants to whom they were issued and the amounts of money paid (15a, 17a).

No criminal purpose or intent could possibly be served by wilfully concealing or destroying these disputed documents, if they were in fact in existence, while at the same time the defendant turned over to the government corporate records disclosing the very facts which the government would have the Court believe the defendant was concealing. Microfilm copies of the cancelled checks are available from the bank where the corporate account is kept. The original purchase orders and copies of invoices are available from the suppliers (8a-9a). However, neither the Agent of the Federal Bureau of Investigation nor the United States Attorney requested the defendant to supply these copies or the addresses of the merchants who had the original purchase orders and copies of invoices, nor the microfilmed copies of the cancelled checks. The government has insisted upon the production of these items from the files of the corporation which apparently were lost, misplaced or thrown out (16a).

As a matter of fact, when Agent Mulroy had obtained the names of the merchants from the corporate records,

he did not ask the defendant for the addresses or any information concerning these merchants. He did not take these matters up with the defendant at all (18a). Despite this, the United States Attorney took great pains to point out to the trial court that although Agent Mulroy had the names of the merchants, he did not know where the merchants were located (21a-22a). It is obvious that had Agent Mulroy, or the United States Attorney, asked for the addresses of these suppliers, there would be no difficulty in locating them. The fault, if any, lies with the government in failing to ask for the information and does not lie with the defendant.

In an attempt to prove the existence of the missing documents at the time of the service of the subpoena duces tecum, the government tried to show motive for concealment or destruction of the documents. An attempt was made to prove that the defendant shipped second quality goods, rather than first quality. In this endeavor, the government again failed.

The witness, Cohen admitted not having seen the records in question since July of 1956, nine months prior to the service of the subpoena, and also admitted that he did not know what quality merchandise was called for in the transactions in question. He did recall that the orders for tires called for reconditioned and not new tires (10a). He did not know what quality textiles were called for by the orders and could not tell from the samples that had been received from the customers (11a-12a).

Assuredly, this testimony could not and does not substantiate the government's theory of motive for concealment of the missing records, nor can this testimony prove the existence of the documents in question on March 27, 1957, nine months after the witness last saw them.

On the contrary, the turning over of the records of the corporation which disclosed everything that the govern-

ment would have the Court believe the defendant was concealing completely negates any theory of motive on the defendant's part.

As the Court stated in *Blim v. United States*, 68 F. (2d) 484, 487:

> "What this Court said in Jones v. United States, 209 F. 585, 587, is especially applicable to the case at bar. 'Under the authorities, the present contempt proceeding having been entitled as such and brought here on writ of error and being entirely punitive in its character, is criminal in nature, and respondent was clothed with the presumptions that obtain in a criminal prosecution. He was presumed innocent until that presumption was overcome and his guilt established beyond a reasonable doubt. Gompers v. Buck's Stove & Range Co., 221 U. S. 418 * * *.'"

The Court below stated that in its opinion a *prima facie* case had been made out and the Court apparently felt that inasmuch as the defendant did not take the witness stand (18a) it was justified in finding the defendant was guilty of contempt. (22a).

The mere making out of a *prima facie* case, in and of itself, can not sustain a finding of guilt in a criminal proceeding. The evidence must be sufficient to prove the defendant guilty beyond a reasonable doubt, and this burden remains on the prosecution at all times.

As this Court stated, in *United States v. Patterson*, *supra*, at page 661:

> "The decision below thus rested primarily on a presumption of continued possession and existence held sufficient to constitute a prima facie case. Neither the existing precedents nor the facts of this case warrant such a drastic shifting of the burden of proof in a criminal case * * *."

POINT II

Defendant purged himself of the alleged contempt.

After the Court below found the defendant guilty of a criminal contempt and had passed sentence, the defendant made an effort to purge himself of the finding of contempt, by testifying under oath the following day. At the conclusion of the hearing the Court adhered to its original decision, with the continued right of the defendant to purge himself of the finding of contempt (26a). The Court evidently had some doubt in its mind concerning the propriety of its decision, stating at page 144 of the minutes of the hearing (26a):

> "However, in order to be completely fair to this man, and in order to relieve myself of any possible—even remote and most unreasonable—doubt, I want to be sure that we are being completely fair, and I would appreciate it, Mr. Zinke, if you would ask the FBI agent if he could please interview the superintendent of this building and the charwoman to find out whether there is any basis whatever to this witness's claim that his business documents apparently disappeared from his office, and that he complained about it on a number of occasions, because, if there is any basis for such a claim, I would like to have the charwoman and the superintendent examined and I think you should ask them to communicate with the accountant who worked for his business, as well."

It is apparent from the Court's statement that it felt the defendant had not told the truth and that was the basis of its decision. Yet, the Court apparently had some doubt in its mind.

In the case of *Ex Parte Hudgings*, 249 U. S. 378, the Supreme Court in discussing the power of a court to punish a witness for a criminal contempt, who it believed to have committed perjury, stated at pages 383 and 384:

"An obstruction to the performance of judicial duty resulting from an act done in the presence of the court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly be shown in every case where the power to punish for contempt is exerted—a principle which, applied to the subject in hand, exacts that in order to punish perjury in the presence of the court as a contempt there must be added to the essential elements of perjury under the general law the further element of obstruction to the court in the performance of its duty. As illustrative of this, see United States v. Appel, 211 Fed. Rep. 495. It is true that there are decided cases which treat perjury, without any other element, as adequate to sustain a punishment for contempt. But the mistake is, we think, evident, since it either overlooks or misconceives the essential characteristic of the obstructive tendency underlying the contempt power, or mistakenly attributes a necessarily inherent obstructive effect to false swearing. If the conception were true, it would follow that when a court entertained the opinion that a witness was testifying untruthfully the power would result to impose a punishment for contempt with the object or purpose of exacting from the witness a character of testimony which the court would deem to be truthful; and thus it would come to pass that a potentiality of oppression and wrong would result and the freedom of the citizen when called as a witness in a court would be gravely imperiled."

Also, in the case of *Blim* v. *United States*, 68 F. 2d 484, at page 489, after discussing the *Hudgings* decision, stated:

"In the Blim case the court sentenced the respondent to the County jail for a period of three months, with the privilege of purging himself of said contempt within ten days by fully, freely and truthfully testifying. The sentence in the Blim case is not exactly like the sentence in the Hudgings case, as Blim is given a definite sentence, with the privilege of purging himself within ten days by testifying truthfully, according to the court's conception of the truth."

It is quite apparent that the Court below did exactly what the Supreme Court condemned in the *Hudgings* case, it determined what it thought the truth should be. Until such time as the defendant would admit to the Court's version (26a) rather than what the defendant maintained was the truth, he would be unable to purge himself of the contempt. This despite the fact that no evidence contrary to the defendant's version had been adduced.

The Court refused to accept the defendant's version (27a), that he was at a loss to explain the disappearance of the records and that he had nothing to do with their disappearance. This despite the fact that no evidence was introduced to the contrary, either at the trial or at the hearing. Defendant gave the same testimony to the Grand Jury and neither the Federal Bureau of Investigation nor the United States Attorney had adduced any proof before the Grand Jury or the Court to dispute the defendant. The Court based its decision on a presumption that the records having been in existence in July, 1956, were presumed to be in existence on March 27, 1957. The Supreme Court in *Maggio* v. *Zeitz*, *supra*, and this Court in *United States* v. *Patterson*, *supra*, condemned that reasoning.

Again, at the risk of being repetitious, it must be pointed out that defendant in turning over the records and books of the corporation, which contained the records of his dealings with the merchants, their names and the amounts paid to them, had destroyed any value that concealment of the missing records could have been to the defendant. Had the defendant been intent on concealing his activities in the transactions in question, he most certainly would have destroyed or concealed all of his records and not turned over the books that revealed all.

The fact remains that each of the documents in dispute can be duplicated from impartial sources, i.e., the merchants and the bank. The records produced by the defend-

ant made the location of these records possible. The government can obtain these records without any great effort. Consequently there was no obstruction of justice or flouting of the Court's authority.

As has been stated heretofore, all the United States Attorney need do is ask the defendant either before the Grand Jury or before the Court, the addresses of the merchants, whose names it is admitted are in the records, and the alleged obstruction to the investigation is removed. It is evident that the United States Attorney and the Federal Bureau of Investigation were remiss in their duty to complete the investigation.

Conclusion

The government failed to prove the defendant guilty of a criminal contempt of court beyond a reasonable doubt, and the Court erred in finding that the defendant had failed to purge himself of the alleged contempt of court.

The decision of the Court below should be reversed and the information dismissed.

Respectfully submitted,

WILLIAM MERRITT,
Attorney for Defendant-Appellant.

APPENDIX

United States District Court

SOUTHERN DISTRICT OF NEW YORK

—o—

THE UNITED STATES

vs.

STANLEY HECHT

—o—

Crim. No. C 153-87.

Violation, Contempt of court.

Failure to produce records pursuant to a subpoena of May 1957. Grand Jury.

Docket Entries

(Tr. pp. A-B)

Date	*Proceedings*
	On May 15, 1957 the witness is brought before Hon. Lawrence E. Walsh after refusal to produce corporate records pursuant to subpoena. Witness directed to produce corporate records called for by subpoena.
6- 4-57	—Hearing concluded before Hon. Edmund L. Palmieri. Court adjudges witness to be in contempt and sentences him to three months at a place of confinement to be designated by the Atty. Genl. If at any time he complies with subpoena duces tecum defendant may purge himself of said contempt. Bail fixed at $5000. Remanded. Deft. to surrender for service of sentence on 6-5-57 at 9 A. M. is bail of $5000 is posted. Palmieri, J.

Docket Entries

6- 4-57—Filed Court's Exhibit #1—stipulation that criminal contempt proceeding be held without required notice. Approved. Palmieri, J.

6- 5-57—On application of defendant the Court orders the hearing re-opened. Both sides rest. Court adheres to original decision of 6-4-57 and signs order of judgment and commitment. Bail fixed at $5000 pending appeal. Palmieri, J.

6- 5-57—Filed order of judgment and commitment. Palmieri, J.

6- 5-57—Filed notice of appeal. (EWB)

6- 5-57—Filed bail bond pending appeal for $5000. Public Serv. Mutual Ins. Co.

6- 7-57—Filed remand dated 6-4-57. Palmieri, J.

6-19-57—Filed affidavits and notice of motion for an order enlarging the bail limits of Stanley Hecht.

6-25-57—Memo endorsed on motion to enlarge bail limits of Stanley Hecht. Motion argued. Motion granted. Order to be signed. Palmieri, J.

6-27-57—Filed order enlarging bail limits of Stanley S. Hecht. Consented by U. S. Atty. and Surety, dated 6-27-57. Palmieri, J.

7- 1-57—Filed transcript of record of proceedings, dated 6-4, 5-57.

Judgment and Order of Commitment

(Tr. pp. 147-148)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

A Grand Jury of this Court having applied on May 15, 1957, for a direction to Stanley S. Hecht, as President of World Over Trade Corporation, a New York corporation, to produce certain books and records of said corporation, called for by a subpoena duces tecum issued by the Clerk of this Court, dated March 27, 1957, the witness being at that time and thereafter the President and a Director of said corporation, and oral argument having been heard in connection with said application, at which argument Stanley S. Hecht appeared with counsel in opposition thereto, and this Court having directed Stanley S. Hecht to produce all of the books and records set forth in said subpoena duces tecum, and Stanley S. Hecht having failed to produce said books and records, and a stipulation having been entered into waiving notice for a hearing to be conducted in open court to ascertain whether Stanley S. Hecht was in contempt of Court for having failed to produce said books and records, and said hearing having been held in the presence of Stanley S. Hecht and his counsel, Ernest W. Brunner, Esq., and the Court having concluded after the taking of testimony and the hearing of arguments and after due deliberation that the witness, Stanley S. Hecht, had failed to give adequate excuse for not producing all of the books and records of said corporation, which at all times were in his possession or under his control, pursuant to the said subpoena duces tecum and the direction of the Court,

and that the action and conduct of the witness in failing to produce said books and records in compliance with the lawful order of this Court was wilfull and contumacious and constituted a criminal contempt, it is hereby

ORDERED, ADJUDGED AND DECREED that pursuant to provisions of Rule 42(b) of the Federal Rules of Criminal Procedure, the said Stanley S. Hecht be and he hereby is adjudged guilty of criminal contempt of this Court and is hereby committed to the custody of the Attorney General or his authorized representative for a period of ninety (90) days, unless he shall sooner purge himself of such contempt by substantial compliance with the said subpoena duces tecum in producing the aforesaid books and records before this Court, or is otherwise discharged according to law, at

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshall or other qualified officer and that said copy serve as the commitment of the defendant.

Dated: New York, N. Y., June 5, 1957.

EDMUND L. PALMIERI,
U. S. D. J.

Excerpts from Testimony

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Before: HON. EDMUND L. PALMIERI, *District Judge.*

New York, June 4, 1957.

Appearances:

PAUL W. WILLIAMS, Esq., United States Attorney, for the Government; by WILLIAM K. ZINKE, Esq., Assistant United States Attorney.

WILLIAM MERRITT, Esq., ERNEST W. BRUNNER, Esq., Attorneys for the Witness.

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[2] The Court: Do you wish to make a statement?

Mr. Zinke: Yes, your Honor, I do.

There has been a stipulation which has been entered into between the Government and the defendant and his attorney, waiving the notice which is required under Rule 42(b) of the Federal Rules of Criminal Procedure, which I would like to furnish to the Court (handing).

The Court: Very well. The stipulation is approved. I direct the clerk to make it a part of the record as a court exhibit.

The Clerk: Court's Exhibit No. 1.

Mr. Zinke: Shall I proceed, your Honor?

The Court: Yes.

Mr. Zinke: The Government would like to state at the outset, your Honor, the reason for this proceeding and the

purpose for which it is being held.' This is a proceeding under Rule 42(b) of the Federal Rules of Criminal Procedure against the defendant Stanley Hecht, who was served a subpoena duces tecum on March 27, 1957, as president of World-Over Export Trade Corporation for the production of certain books and records of the corporation. Specifically, the subpoena required the production [3] of all books and records for the calendar year 1956 and the year 1957 up to the time of the serving of the subpoena on World-Over Export Trade Corporation, including all correspondence, quotations, invoices, freight bills, export and import licenses, bills of lading or receipts, bank statements, checks, letters of credit, corporate tax return for the year 1956 and any and all other data relating to the operation of said corporation.

The Government would offer this subpoena as Exhibit No. 1 in this proceeding in evidence. May I show it first to the defendant's attorney (handing to Mr. Brunner)?

The Court: Yes.

Mr. Brunner: No objection.

(Marked Government's Exhibit 1.)

Mr. Zinke: At the time I offer this as Government's Exhibit No. 1, I ask for a stipulation from the attorney for the defendant that the defendant was served with this subpoena on March 27, 1957.

Mr. Brunner: We will so stipulate.

Mr. Zinke: Thereafter the defendant Hecht did produce some of the books and records called for in the subpoena duces tecum, but all of the [4] records relating to transactions between the corporation and suppliers in the United States through whom textiles and other goods had been purchased to fill orders abroad under our ICA program, International Corporation Administration program, were conspicuously absent; at the time the defendant knew that these transactions were under investigation by the

Federal Bureau of Investigation which was the reason for the service of this subpoena in the first instance.

Because of the conspicuous absence of the pertinent books and records of the corporation, Mr. Hecht was subpoenaed to appear before the Grand Jury and on May 15, 1957, he did so appear.

At that time he was questioned as president of the World Over Export Trade Corporation as to the books and records of the corporation which he had failed to produce.

The defendant repeatedly refused to answer questions of a general nature as to the books and records of the corporation, claiming the Fifth Amendment as his reason for failing to answer, although he stated in answer to questions by the Government before the Grand Jury that he did not believe that his answers would tend to incriminate him.

[5] He was brought before Judge Walsh in Room 318 on May 15th and he was directed by Judge Walsh to produce the books and records of the corporation pursuant to the subpoena duces tecum, to produce any of the books and records, I should say, which he had failed to produce pursuant to the subpoena duces tecum served upon him.

He was also instructed by Judge Walsh that there was no privilege attaching to questions of a general nature relating to the books and records of this corporation.

[8] The Court: Resume the hearing.

Mr. Zinke: As the result of Mr. Hecht's testimony before the Grand Jury on May 17th, a transcript of which is Government's Exhibit 3 in evidence, the defendant was again brought down to Room 318 before Judge Walsh, and Judge Walsh again directed him to answer questions of a general nature pertaining to the books and records of the corporation.

Sigmund L. Cohn—for Government—Direct

On May 28, 1957, the defendant appeared for a third time for the Grand Jury. On this occasion he did testify, he did answer questions put to him relating to the books and records of the corporation, and the general manner in which they were kept.

The Government offers as Exhibit 4 in evidence in this proceeding a transcript of the testimony of the defendant on the third occasion before the grand jury on May 28th.

* * *

[15] SIGMUND L. COHN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. Zinke:

* * *

[16] Q. When did you begin your employment with the corporation, approximately? A. Approximately in March 1956.

Q. And up to what time did you continue your employment? A. Until February 1957.

* * *

[21] Mr. Zinke: I will withdraw that last question, your Honor.

Q. Thereafter, Mr. Cohn, were purchase orders prepared in the office of World-Over Export Trade Corporation? A. Yes, sir.

Q. Who prepared them? A. I did, sir.

[22] Q. I beg your pardon? A. I prepared them at the direction of Mr. Hecht.

Q. How many copies did you prepare? An original and how many copies? A. Two original copies and one export copy.

Q. What was the extra copy for? A. The extra copy was a copy to be signed by the supplier of his acceptance.

Q. What was to be done with that? A. To be returned to the importer.

Q. Were the signed copies returned by the suppliers with their acceptance thereon? A. Yes, sir.

[26] Q. Did you see the orders, Mr. Cohn, received from the far eastern customers, customers in Vietnam?

Mr. Brunner: I am sorry. I did not hear that.

Mr. Zinke: Would you read the question?

(Question read.)

Q. Did you see those orders? A. At a later date I saw them.

Q. Do you know what quality goods were called for by those orders?

Mr. Brunner: Objected to as irrelevant and immaterial as to this issue as to whether or not—the issue is whether the documents were lost or not lost. That is the only issue.

Mr. Zinke: Your Honor, they bear upon the wilfulness of the defendant in this case.

Mr. Brunner: They have nothing to do with the question of whether or not the documents are in their possession or had or had not been delivered to the defendant.

The Court: It may show some reason for [27] wanting to conceal them and not produce them. It may also tend to establish whether the reason was valid or invalid. I will allow the question.

Sigmund L. Cohn—for Government—Cross

[37] Q. There was other bookkeeping that you would [38] currently do, was there not, in the preparation of invoices or bills? A. No, sir.

Q. There were not? A. No, sir.

Q. There were not? A. No, sir.

Q. Were any books of account kept at all? A. There were books in the office, but I had nothing to do with it. I do not know anything about bookkeeping.

Q. Regardless of whether you do, who did it? A. The accountant who came in.

Q. Who posted the entries in the books? A. I believe the accountant did it. He came in every four weeks or five weeks or six weeks.

Q. Who prepared the papers for the accountant to make the entries from? A. I do not now, sir. I did not.

Q. You did not? A. No, sir.

* * *

[43] *Cross-examination by Mr. Brunner:*

Q. Mr. Cohn, you testified regarding the purchases of certain tires. Am I correct in stating that your testimony was to the effect that Mr. Hecht's correspondence at all times disclosed reconditioned or recapped tires? A. To the best of my knowledge, sir, the correspondence mentioned recon. tires.

Q. And recon. tires were what were shipped, is that correct? A. Yes, sir.

Q. You stated that, except for one shipment, to your knowledge, the other shipments were complete; is that right? A. Yes, to the best of my recollection.

* * *

[48] Mr. Brunner: Thank you, your Honor. I will go to another point, then.

Sigmund L. Cohn—for Government—By the Court

Q. Concerning the amount of shipment of the textiles, is it fair to again state that you do not know of your own knowledge what, if any, textiles were shipped by Mr. Hecht after you left his employ? A. I do not know. I was not there. I do not know.

* * *

[52] Q. When did you say you left the employ of Mr. Hecht? A. February, 1957.

Q. Can you state how long before that time it was that you last had occasion to have particular correspondence and invoices and packing lists, and so forth, in connection with these various shipments? A. Are you talking about textiles?

Q. Textiles and tires. A. Textiles, I would say, lasted for those that we handled, would have been around June 1956.

Q. Isn't it— A. July, 1956.

Q. We can say that for about the last six months when you were there you had no occasion to check into whether or not those files—whether those documents were still in the files; is that true? A. No particular reason.

* * *

[58] *By the Court:*

* * *

[59] Q. Do I understand your testimony correctly to be that in all of the instances, practically 90 per cent of the instances, that you saw goods shipped out, these Vietnam customers, the quality of the goods shipped was inferior to the sample which was sent by the customer? A. I would like to qualify that. I only got very small samples from Mr. Hecht, as far as the quality is concerned, which he wanted to buy. Consequently, when I went out into the open market and to the primary converters, I was looking for those qualities, not knowing, naturally, in the begin-

ning, that anything else but those qualities were considered, I obtained first quality offers.

From the small sample you cannot see whether [60] it is first quality or second quality or third quality or fourth quality.

Q. But you can state that the goods shipped were of inferior quality and never of first quality, is that right? A. The goods shipped were second quality.

Q. They were seconds? A. Yes, sir.

Q. They were never of first quality? A. No, sir.

* * *

[61] JAMES T. MULROY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. Zinke:

* * *

[62] Did there come a time when you did examine the [63] books and records of the corporation? A. Yes.

Q. Approximately when was that? A. Approximately April 1st.

Q. Can you identify this book to which I direct your attention? A. Yes.

Q. What is that book? A. This is a book of World Over Export Trade Corporation reflecting the cash receipts book, cash disbursements, general journal, general ledger; a combination of all of their books.

Q. Let me ask you this, Mr. Mulroy: for what purpose were you making your investigation? A. The FBI had received an allegation from the International Cooperation Administration—

Mr. Brunner: I respectfully submit that that is purely hearsay regarding this particular defendant.

The Court: Yes, sustained. Ask the witness to describe the purpose of this investigation, without referring to assertions made by third parties and charges made. What you are looking for and what you were seeking to ascertain, what the nature of your search was.

[64] The Witness: I was seeking to determine the nature of the purchases by World Over Export Trade Corporation, which purchases of the World Over would have eventually found their way to a sales book and the merchandise would have found its way to the far eastern market of Vietnam and Cambodia.

I was attempting to follow the chain of goods from this country to the far east.

Q. In connection with your examination of the books and records of World Over, did you find that copies of purchase orders were retained in instances in the files of the corporation? A. I cannot say. I went through the books and records of the corporation looking for data in connection with the far eastern countries of Cambodia and Vietnam; purchase orders in connection with transactions to those countries I was looking for. I did not find any such purchase orders.

* * *

[65] Q. Did you find any papers in the files of the corporation in regard to these transactions? A. I did.

Q. What did you find? A. I found the correspondence files relating to negotiations with importers in Cambodia and Vietnam, general letters of correspondence.

I found copies of bills of lading for goods going to the far east. I found copies of invoices for goods going to the far east.

Q. From World Over to purchasers— A. From World Over to purchasers in Cambodia and Vietnam. I found

copies of packing lists for textiles which were sent to Vietnam. I found copies of letters of credit with the Chase-Manhattan Bank. And I believe the Manufacturers Trust Company were in the textiles and rubber tires being shipped to Vietnam and Cambodia.

Q. Generally speaking, Mr. Mulroy, would you say that the files of the corporation were fairly [66] complete with regard to transactions between World Over and the customers in the far east? A. As far as the goods which found their way to the far east is concerned, I was unable to find any record relating to the purchase of those goods in this country anywhere, in fact. They showed them coming in to the books of the corporation, although there would have been data in connection with the sale of those goods to the far east.

Q. To repeat my question, would you say that generally speaking the files of the corporation were fairly complete with regard to the transactions between World Over and the customers abroad? A. To that question, on the surface it appeared to be complete, but on occasion, in reviewing these files, I do see where there are copies of letters missing.

For instance, a foreign importer writing a letter to World Over referring to "our letter of such-and-such a date," and that particular letter might not be found in the file. The same way with World Over to a foreign importer, "referring to our previous letter of a particular date:" on a few occasions those types of letters of reference were [67] missing, but generally speaking they were filed complete.

Q. Did you find any papers in the files of World Over with regard to transactions between the corporation and suppliers in this country? A. Yes. I found there were invoices for typewriter repairs and things of that nature, purchases of paper, invoices of that nature were in the files.

Q. How about papers with regard to transactions between World Over and suppliers in this country of textiles and rubber tires? A. I was unable to locate any such papers.

Q. Any papers? Purchase orders? A. I was unable to locate, for instance—I worked from the book of World Over, the cash disbursements book.

The checks issued by World Over are listed chronologically and there is a total column indicating the amount of the check. It is then broken down to what the particular check was for. For instance, the purchases of goods in the column in the book, and it was items of that nature that I was interested in, the purchase of goods and textiles and rubber tires, and those rubber tires would be indicated.

There is another column here for general items, [68] miscellaneous, where you might find office expenditures on typewriter service, and things of that nature.

First, the checks were all mixed up. I put about 100 of the checks in order and then I went through the checks chronologically and found that certain checks were missing.

Q. Which checks were those? A. The checks that were missing are the canceled checks of particular items purchased.

Q. Which items purchased? A. The items which would be indicated in this book in the purchase column, which would reflect the purchase of rubber tires and textiles. For instance, they were the only checks that were missing of these 100 that I put in order.

Q. All the other checks were there? A. All the other checks were there in chronological order, rather than waste my time putting all these checks in order, then looked up the names of the supplier.

Q. Did you find the names of those? A. Yes, they are listed there in the book. I went through the balance of the checks to see if I could find the canceled check indicated

by the cash [69] disbursement book, in order to start this rolling. I was unable to locate any of the canceled checks for this particular purchase of goods. I was unable to locate the invoices covering these items which were indicated as paid. I was unable to locate any order for these goods; unable to locate any letter of transmittal which might accompany the check of the particular vendor.

I noticed that there was a packer employed or used by World Over. I was unable to locate any instructions of World Over to the packer as to how the goods should be packed and shipped.

After spending three days looking through all of the files that were in the two offices and actually handling all of the folders in these file cabinets, and with Mr. Hecht going through the drawers, the desk drawers, I was unable to find anything relating to these items that I have just mentioned.

I speke to Mr. Hecht about it. He was at a loss as to why these documents should be missing. In fact, he went through the cabinets himself trying to find these documents for me. He was at a loss as to an explanation. He pointed out to me that in some instances the charwoman may have come around and actually thrown records away.

* * *

[70] *Cross-examination by Mr. Brunner:*

* * *

[72] The Court: Sustained.

Q. During the three days that you were at the office were you given full authority and leave to go through the office as you pleased? A. Well, all records of the corporation were subpoenaed, a subpoena duces tecum had been issued, and when Mr. Hecht appeared in pursuance of the subpoena duces tecum, there was only canceled checks indicating that there was a huge volume of files and it was

agreed that he would permit an FBI agent to go up to his office and review the files, and I reviewed whatever files he had, in pursuance to this subpoena duces tecum.

Q. Whatever you wished to see there or look at, you were permitted to do so, is that right? A. Certainly.

* * *

[74] Q. And after spending about three days there you took away approximately a little over 700 documents, is that correct? A. After spending three days there, I got together the only papers that I could find dealing with transactions in Cambodia and Vietnam, which documents were of interest to me from my investigation and which I would want to examine very, very closely; rather than to take up space in an office there with two desks, I received permission from Mr. Hecht and yourself to remove those documents and examine them at my leisure, and in return I gave a receipt. I explained to you and Mr. Hecht at the time that these were merely documents relating to correspondence with these people in Vietnam and Cambodia.

Q. Now, Mr. Mulroy, many of these documents that are open to you and which you picked up were documents, which you now have in your lap, disclosed the names of suppliers and packers, and so forth, isn't that correct? A. Where a check was made out to a particular person—I never saw the canceled check.

Q. I appreciate that. My question to you is whether the names of these suppliers who would have [75] received the canceled checks were found by you in documents which you picked up at this office, is that correct? A. The only evidence I have of any suppliers named or anything relating to a supplier is from an indication in this book that, for instance, check No. 143 was issued to John Doe, Inc., for example. That was the only indication of any supplier at all that I came across.

Q. And also that same book, which is a large ledger book, contained the name of the packer to whom you previously referred as being a packer to whom these shipments were delivered for packing, is that correct? A. There was a name of a packer indicated in this book.

Q. That information was obtained by you or was disclosed to you from the ledger book which you picked up at the office of World Over Export Trade Corporation? A. That is correct.

* * * * *

[76] *Recross-examination by Mr. Brunner:*

* * *

[77] Q. One more question. After you discovered these names of the corporations and persons, did you ask Mr. Hecht whether he could give you the address or further information on these persons? A. I did not disclose to Mr. Hecht anything that was in this book. I did not take it up with him at all.

* * *

[79] The Court: I think you should speak first. A prima facie case has been made out and you have the time to submit any proof. Unless you can point out some reason why your client should not be held in [80] contempt, it seems to me that this is a plain case for such a holding.

* * *

[83] The Court: How did they disappear?

Mr. Brunner: There again, your Honor, we can very well explain that. The situation under which this man operated was such that he had a small office and even that he does not use alone, but he shared space with other people, not even in business with him. There are times when because of the lack of adequate desk space, and so forth, he filed things or put things in chairs and he may have been working, but I do not state that as a fact, but even in questioning the witness he has not been able to

say that as a fact. He very obviously said to me, "I do not know."

The Court: There is nothing as to the record—you have declined the oppertunity to submit any evidence or offer any excuse. As I understand you, you are saying that on the record before me your client is without blame and should not be held in contempt.

Mr. Brunner: I submit, your Honor, that contempt is a wilful disobedience, and on the record here there is nothing to show that this person wilfully withheld records. The witness stated that almost [84] the tires were shipped to Cambodia and said only one shipment was not completed. Certainly, the record showing the purchase of these tires would be to his advantage, yet those records are missing.

The United States Attorney made much-to-do about the fact that the records dealing with the other part of the transaction were all there. If they had not been there, we would hear the converse of the story. But those records were missing. Those records were all there. The books which were turned over to Mr. Mulroy, were turned over to him voluntarily, and certainly that could not have been accidentally turned over. It was a large book, the largest individual document by far that was in the possession of this defendant. That book was turned over to Mr. Mulroy and that book contained the very names of the parties that they are now making an issue of not having records pertaining to.

Yet Mr. Mulroy stated that he did not want to disclose to Mr. Hecht the fact that he had these names and wanted their addresses. The witness cannot be held to blame for the fact that they did not want to disclose the names which were in his own books, and he could have very well said to them, "Who is [85] such-and-such and where is his office?"

They had the information, and the information was not obtained from some third party or outside party. It was information voluntarily given to them by this very defendant. They had it. They examined it. They got the names. They chose for their own reasons not to come to this defendant and say, "Bring out the records." What possible harm could have come if he had said, "Look. Here is a check that went out to so-and-so. Where is his office?" They preferred not to make that statement.

Now they come here and want to hold him responsible because he did not produce the books and records pertaining to this person.

Sure, these books and records were lost, but he could have easily said, if he had been asked, or to have given the information they requested. On the one hand they were dealing with him in absolute secrecy and then they came to your Honor and said, "Because we have dealt secretly with him, because we were not open with him and we did not want to tell him what we were doing, we think he should be held in contempt of court."

I respectfully submit, your Honor, that I [86] do not think that anyone in this court room or in any other court room can say that he has never lost anything of value, whether money or papers or documents. Here is a man who is engaged individually, and it is a one-man corporation where he has got thousands of things on his mind. There were innumerable letters and correspondence between him and this person in Cambodia or Vietnam, or wherever it is, and the documents are in possession since April 2nd, have been in the possession of the Government. Those documents clearly show the tremendous bickering back and forth, the discussions back and forth between them about this correspondence.

It is most conceivable and natural that sometimes between last June and now, a period of a full year, that he would have had occasion to pull it out of these files and,

to refer to them in connection with the correspondence that he has been carrying on with these people abroad. He could not carry those figures in his head. And somewhere in dictating the letters and somewhere in carrying on this correspondence these documents were lost or mislaid or they were destroyed. I do not know what happened to them, your Honor, but certainly this is a criminal [87] nature proceeding and he is entitled to have his case proven against him beyond a reasonable doubt.

I respectfully submit that where the evidence is that only one man, not seeking these documents in a full year according to his own admission, while the documents in the hands of the Government clearly show that these transactions were active right up to the present time, correspondence back and forth, and natural referral by this man to that correspondence—obviously Mr. Colin did not answer that correspondence. He did not even see it. Yet that correspondence was answered, and that is in black and white in the record given to the Government and that correspondence was answered and reference must have been made to these documents, and if reference is made to these documents there is a most logical reason, your Honor, and if one got lost they were probably all in the same files. The whole thing amounted to perhaps 50 or 60 pieces of paper. That is the whole basis of this case, that under the circumstances there is no contempt case made out against this defendant.

[95] Mr. Zinke: I would like in closing to point out the difficulty which you may imagine Mr. Mulroy, the FBI agent, has and will have in his investigation. He has names of suppliers somewhere in the United States, any place, and they had to be in the United [96] States at some place. He has to go all over the country or all over any place in order to find out who these suppliers are

from whom purchases were made in order to fill these orders from abroad.

[97] Mr. Brunner: No, if your Honor please. I just again respectfully urge, as I did before, that there has been no wilful act on the part of [98] this defendant as to a disposition of the books and records and that he did not intentionally destroy, lose or otherwise dispose of any records by any act which is a wilful act on his part.

The Court: Gentlemen, it is my conclusion that a sufficient case has been made out to justify my finding that the defendant intentionally and without adequate excuse defied the processes of this Court and has failed to comply with a subpoena duces tecum. His conduct is contemptuous and contumacious. He has persisted in that conduct despite several opportunities to comply with the subpoena, despite clear instructions of the Judge of this Court with regard to his obligations as a witness, pursuant to the direction of that subpoena.

Therefore, I adjudge the defendant in contempt upon the record before me.

I consider now an application to punish him for that contempt. I would like to confer with counsel off the record.

(Discussion at the bench between Court and counsel, off the record.)

The Court: Stand up, Mr. Hecht.

I sentence you to serve a term of three [99] months in jail for contempt of court, upon the stipulation that if at any time you comply substantially with the obligations of the subpoena duces tecum, which up to this time you have failed to comply with, you may be purged of contempt upon the proper showing before a judge of this court that you have so complied.

I direct that you surrender at 4 o'clock tomorrow afternoon and that in the meantime you give bail in the sum of $5,000 for your appearance.

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[115] Mr. Merritt: If your Honor please, after conference with counsel and with the defendant, the defendant states that he is willing to take the witness stand to explain whatever he may know about the missing documents as originally called for by the Court, but he cannot produce them.

The Court: He declined that opportunity yesterday.

[116] Mr. Merritt: Perhaps on second thought he might purge himself of that contempt and try to explain to the satisfaction of the Court what did happen to those documents.

The Court: I am not prepared to conduct a hearing now. I will be glad to do it tomorrow morning—I cannot do it tomorrow morning, either. How long do you think it will take?

Mr. Merritt: I do not think it will take more than five minutes.

The Court: All right. I will reopen the hearing for the purpose of hearing him.

STANLEY S. HECHT, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination by Mr. Brenner:

[117] Q. Besides those employees did you have any accountants during that past year? A. Yes.

Q. How many accountants did you have? A. About six.

Q. Were they simultaneously or consecutively? A. Consecutively.

[120] Q. During this past year did any occasion ever arise when you were unable to locate any documents? A. Yes, this happened. I just need for the record for my accountant certain invoices.

Q. Please tell us when that occurred. A. The last time maybe in January or December or January, I need certain invoices to file for the packer and I looked. This happened in December and January. These transactions were only that I needed the invoices. So Mr. Cohn said, "You had them on your desk the day before."

We looked. Of course, the bookkeeper would make these entries in the books, with the proper invoices. But we did not find them. This happened long before the FBI came into the picture.

Q. Did you ever make inquiry of anyone else as to what might have happened to those documents? A. Yes.

Q. Please tell the Court. A. It happened on a few occasions, not only as to catalogs but correspondence which has been separated in a chair next to my desk, in a chair, because of the [121] space is too small, and sometimes stationed in the corner or on the floor. Just for the purpose of having him select the documents, it happened once in a while I used to telephone on that day and never come back into the office, more missing papers. So I asked the cleaning woman, that I had left there forms of various correspondence. She said she had orders from the superintendent that whatever was found on the floor is to be thrown away. So I make this claim to the superintendent long before last year. This happened maybe twice or three times. He said whatever was left on the floor was to be thrown away. These are the superintendent's order and instructions, to throw them away.

Q. Did you ever notify the superintendent or advise the cleaning woman to destroy or throw away any of the documents which are now missing? A. No, sir. The cleaning woman, she came in at 5 o'clock in the afternoon.

Stanley S. Hecht—Defendant—Cross

Q. Did you at any time personally destroy any of these documents? A. No, no reason for it. I needed this correspondence and documents for later purchases.

Q. Do you have any of the documents in your [122] possession which are now missing and which you have been directed to produce? A. No, sir. I went through with Mr. Mulroy, I went through, myself, to ascertain it. We looked back and forth for the missing correspondence. I looked in and made a list from the correspondence and other documents.

Q. Do you know where these documents would be located? A. No, sir.

Q. Were any other documents ever destroyed by yourself or anybody with your approval? A. No.

Q. If you had those documents, would you produce them? A. With pleasure.

Q. Do you know when and where you last saw the documents, or any of the documents which are missing and which have not been produced? A. I recall my accountant asking for those invoices for transactions in Saigon and Cambodia, to make the proper entries, the accountants, about December or January of this year.

Q. Since then have you seen them? [123] A. No, sir.

* * *

[126] *Cross-examination by Mr. Zinke:*

* * * *

[137] Q. Let me ask you this: You wouldn't suggest that any of the invoices were just thrown on the floor of your office, would you? A. No, not purposely because I need these invoices to buy tomorrow merchandise from the same suppliers and to buy next year because certain suppliers give me an excellent service and special price, so I need these invoices for later purchases.

* * * * *

[142] Q. How do you account for that? A. But Mr. Mulroy don't told you a very important fact, that he found

in different files different checks, more checks, not organized properly, in the proper place.

The Court: What you are saying, in effect, is that a great many more documents than these are missing.

The Witness: Yes.

The Court: And you don't know how it happened.

The Witness: Yes.

The Court: Except that you were not there most of the time and you were not well organized.

The Witness: Yes, it is true.

[144] The Court: I adhere to the decision I reached yesterday, and I am filing this order in the terms which I have already read, and I adhere to the imposition of the same sentence with the same purging clause.

However, in order to be completely fair to this man, and in order to relieve myself of any possible —even the remote and almost unreasonable—doubt, I want to be sure that we are being completely fair, and I would appreciate it, Mr. Zinke, if you would ask the FBI agent if he could please interview the superintendent of this building and the charwoman to find out whether there is any basis whatever to this witness's claim that his business documents apparently disappeared from his office, and that he complained about it on a number of occasions, because, if there is any basis for such a claim, I would like to have the charwoman and the superintendent examined and I think you should ask them to communicate with the accountant who worked for his business, as well.

Mr. Zinke: I was about to add, your Honor, that if Mr. Hecht would furnish me with the names of

his accountant, I will be glad to have the FBI [145] immediately contact them and see what substance there is to the statements which Mr. Hecht has made.

The Witness: The name is Mr. Voker. You have him in the checkbook.

The Court: I will give you an opportunity to confer with your lawyers and with Mr. Zinke so that he can take down the names and addresses of these people to see whether there is any basis for it.

But my own view is that it is incredible that so many business records could have just disappeared in the manner this witness claims. I cannot credit his story.

All right. I am filing the order.

Mr. Merritt: Before your Honor leaves, might I make an application that bail be set pending an appeal in this matter?

The Court: Well, I fixed bail in the sum of $5,000. I grant your application and fix bail in the sum of $5,000.